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10/675,654	09/30/2003	Jeyhan Karaoguz	14282US02	5801

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EXAMINER
CHRISTENSEN, SCOTT B

ART UNIT	PAPER NUMBER
2144	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/675,654	KARAOGUZ ET AL.
	Examiner	Art Unit	
	Scott Christensen	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 September 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-31</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-31</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>30 September 2003</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1.   This Office Action is in regards to the most recent papers filed on 9/30/2003.

Drawings

2.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5)

because they do not include the following reference sign(s) mentioned in the

description: Paragraph [45], wireless link 119. Corrected drawing sheets in compliance

with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of

the application. Any amended replacement drawing sheet should include all of the

figures appearing on the immediate prior version of the sheet, even if only one figure is

being amended. Each drawing sheet submitted after the filing date of an application

must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office

action. The objection to the drawings will not be held in abeyance.

Specification

3.   The disclosure is objected to because of the following informalities:

Paragraphs [01], [43], and [46] each contain references to applications, but

include a blank and Attorney Docket Numbers instead of serial numbers. The blank and

Attorney Docket Numbers should be replaced with the US Serial Numbers of the

applications.

Appropriate correction is required.

4.   The specification is objected to as failing to provide proper antecedent basis for

the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: Claims 11-20 are drawn towards a machine-readable

storage that performs certain steps. However, this functionality is not fully disclosed in

the specification.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

6.   Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

With regard to claim 1, the first step is "detecting availability of at least one of

new media, data and service within the distributed network." The next step mentions

"said newly available at least one of new media, data and service." However, the term

"newly available" lacks antecedent basis, as the detecting step never indicated that the

media is "newly available," nor is there an implication that the media is "newly

available," only that the media is newly detected as being available. For purposes of

prosecution, it is assumed that each reference to "said newly available at least one of a

new media, data and service" actually reads "said available at least one of a new media,

data and service."

Claims 11 and 21 are rejected for similar reasons as claim 1.

Claims 2-10, 12-20, and 22-31, which depend from claims 1, 11, and 21,

respectively, are rejected for similar reasons as claim 1.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1, 7, 11, 17, 21, 27, and 31 are rejected under 35 U.S.C. 102(b) as being

anticipated by "The Gnutella Protocol Specification v0.4", posted on

www.clip2.com/GnutellaProtocol04.pdf on June 3, 2001, hereafter referred to as

"Gnutella."

With regard to claim 1, Gnutella discloses a method for communicating

information in a distributed media network, the method comprising:

detecting availability of at least one of new media, data and service within the

distributed network (Gnutella: Page 1, "Query". The "Query" descriptor is used for

finding media that is available on the network.);

migrating said newly available at least one of new media, data and service to at

least a first media processing system with the distributed media network (Gnutella:

Page 1, "Push". "migrating" is interpreted as being equivalent to transfer (See

specification paragraph [0011], where transfer and migrate seem to be

interchangeable).); and

storing said migrated newly available at least one of new media, data and service

at said least a first media processing system (Gnutella: Page 7. The file is downloaded,

which means that the file is stored at the destination.).

With regard to claim 7, Gnutella discloses automatically migrating said newly

available at least one of new media, data and service to at least a first media processing

system within the distributed media network (Gnutella: Pages 8-9. When a specific file

is requested, it is automatically downloaded (migrated) to the requesting node).

With regard to claims 11-20, the instant claims are substantially similar to claims

1-10, and are rejected for substantially similar reasons.

With regard to claims 21-30, the instant claims are substantially similar to claims

1-10, and are rejected for substantially similar reasons.

With regard to claim 31, Gnutella discloses that said at least one processor is at

least one of a computer processor, media peripheral processor, media exchange

system processor, media processing system processor and a storage processor.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 2-4, 8-10, 12-14, 18-20, 22-24, and 28-30 are rejected under 35 U.S.C.

103(a) as being unpatentable over Gnutella. ·

With regard to claim 2, Gnutella discloses the invention as substantially claimed

except determining whether said stored migrated newly available at least one of new

media, data and service should be processed.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is

very well known in the art.

The Applicant is entitled to traverse any/all Official Notice taken in this action

according to MPEP §2144.03. However, MPEP §2144.03 further states "See also In re

Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial

notice must contain adequate information or argument to create on its face a

reasonable doubt regarding the circumstances justifying the judicial notice)."

Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Alhert, an applicant

must be given the opportunity to challenge either the correctness of the fact asserted or

the notoriety or repute of the reference cited in support of this assertion. We did not

mean to imply by this statement that a bald challenge, with nothing more, would be all

that was needed." Further note that 37 CFR §1.67(c)(3) states "Judicial notice means

official notice." Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

It would have been obvious to determine whether said stored migrated newly available at least one of new media, data and service should be processed.

The suggestion/motivation for doing so would have been that when a file is downloaded, the user should be able to decide whether the file will be processed or not. For example, if a user downloads a song, the user should be able to then determine if the song will actually be played (which would be processing the song's file) or just stored. This allows a user who is downloading many files or downloading larger files to determine when the file will actually be processed, and further allows security software operations (i.e. virus scan) to be performed on the file prior to processing the file.

With regard to claim 3, Gnutella teaches the invention as substantially claimed except if said stored migrated newly available at least one of new media, data and service is to be processed, migrating said stored migrated newly available at least one of new media, data and service into at least one of a media view and channel view.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to migrate said stored migrated newly available at least one of new media, data and service into at least one of a media view and channel view if said stored migrated newly available at least one of new media, data and service is to be processed.

The suggestion/motivation for doing so is that the media view and channel view are both interpreted as being user interfaces for controlling output of the media file. For example, if a song file is downloaded, the user interface that would be displayed to the user for play, pause, fast forward, etc. operations would be the media view. There exist many programs for doing this (e.g. Windows Media Player, Quicktime Player, Real Player, Winamp), and these programs allow a user to control the media presentation, and for many systems, these programs are required to access the media files (for example, to play an mp3 file, the system requires an mp3 decoder, which is not necessarily integrated into the system, meaning a user must use a program that constitutes a media view to access these files).

With regard to claim 4, Gnutella teaches that at least one of a media view and a channel view is associated with said first media processing system (As the media view is a program on the first system (as per the rejection of claim 3), the media view is associated with the first media processing system.).

With regard to claim 8, Gnutella discloses the invention as substantially claimed except scheduling said migration of said newly available at least one of new media, data and service to at least one of said first media processing system and a second media processing system within the distributed media network.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to schedule migration of said newly available at least

one of new media, data and service to at least one of said first media processing

system and a second media processing system within the distributed media network.

The suggestion/motivation for doing so would have been that the claim, as

currently presented, does not require any specific requirements with how the scheduling

is performed or that the scheduling is for a future date and time. A file is scheduled to

be downloaded in an instance where the download is requested. Further, queues are

very well known in the art, and allow a user to select more files for downloading than

can concurrently be downloaded, where the queue starts downloading as many files at

the same time as the system is capable of, and automatically downloads subsequent

files as previous downloads stop (e.g. download is complete or interrupted). The queue

itself is a kind of schedule.

With regard to claim 9, Gnutella teaches indicating said migration of said newly

available at least one of new media, data and service to at least one of said first media

processing system and a second media processing system within the distributed media

network (Gnutella: Page 8, Paragraphs 4-5. The file is indicated as being downloaded

when the system determines that the number of bytes that the file is has been

downloaded. Further, the system recognizes if a download was interrupted, meaning

the system has a knowledge of when downloads are completed, the knowledge

constituting an indication.).

With regard to claim 10, Gnutella discloses the invention as substantially claimed except archiving said stored newly available at least one of new media, data and service.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to archive the stored newly available at least one of new media, data and service.

The suggestion/motivation for doing so would have been that archiving is interpreted as being storing the media in a non-temporary fashion. For example, storing the media on a system's hard disk after downloading the media constitutes archiving. Therefore, if a user wishes to have the file after the turning off the system, the user must store the file on some sort of non-volatile memory (e.g. the hard disk), the storing of which on a non-volatile memory being equivalent to archiving. It is further noted that other forms of archival (i.e. backing up) are well known in the art, where all of the data from a user's system would be archived to another system for storage and/or recovery reasons.

Claim Rejections - 35 USC § 103

11.   Claims 5-6, 15-16, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gnutella in view of US Patent Application Publication US 2002/0194309 to Carter et al., hereafter referred to as "Carter."

With regard to claim 5, Gnutella teaches the invention as substantially claimed except determining whether to push said migrated newly available at least one of new media, data and service to at least on of a second media processing system and a personal computer coupled to the media exchange network.

However, Carter discloses a system for synchronizing media presentations from a first system to a second system (Carter: Paragraph [0043]). The system determines whether to copy files from the first system to the second system (Carter: Figure 4, 404).

It would have been obvious to combine the synchronization of media systems, as in Carter, with the method of Gnutella.

The suggestion/motivation for doing so would have been that the system of Carter allows a user to synchronize a second media system with the media presentations on a first media system (e.g. the user's home computer). Thus, the files downloaded using Gnutella can be transferred to the second device so that the user may enjoy the media presentations in other environments besides the home computer (for example, the user's car).

With regard to claim 6, Gnutella as modified by Carter if said migrated newly available at least one new media, data and service is to be pushed, migrating said at least one of newly available media, data and service to said at least one of said second media processing system and a personal computer coupled to the media exchange network (Carter: Figure 4, 430. When the system of Carter is utilized with that of Gnutella, media files would be transferred (migrated) from the first location to the

second location. The mobile media server can be considered to be a media processing
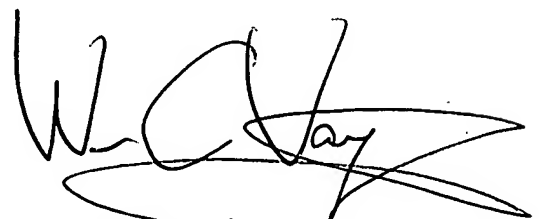
system.).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571) 270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vaughn William can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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